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AUG 04 2008

In re Application of :  
MJALLI et al. :  
Application No. 10/091,759 : DECISION ON APPLICATION  
Filed: March 5, 2002 : FOR  
Docket No. TTP 2001-21-US-A : PATENT TERM ADJUSTMENT

This is a decision on the "Petition to Adjust Patent Term Adjustment (PTA) Indicated in Notice of Allowance," filed December 21, 2007. Applicants request that the patent term adjustment be set at 132 days less any period of reduction associated with the abandonment of the application.

The application for patent term adjustment is GRANTED to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is zero (0) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On October 17, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicants were advised that the patent term adjustment to date is zero (0) days. In response, applicants timely<sup>1</sup> filed the instant request for reconsideration of the patent term adjustment.

<sup>1</sup> Office Records indicate that the Issue Fee payment was received on January 15, 2008.

Applicants assert that the patent term should be adjusted by an additional 325 days for the Office's failure to respond to a reply under 35 U.S.C. 132 not later than four months after the date on which the reply was filed. See 37 CFR 1.702(a)(2). Applicants' assertion is well taken.

Applicants filed a Request for Continued Examination on April 28, 2005. However, the Office did not respond with the mailing of the nonfinal Office action until July 19, 2006, four months and 325 days later. Thus, the Office should be assessed a delay of 325 days. See 37 CFR 1.703(a)(2).

Further, a review of the record reveals that applicants should be assessed an additional delay of 543 days for the abandonment of the application. On July 19, 2006, the Office mailed a nonfinal Office action, setting a three month shortened statutory period for reply. On January 22, 2007, applicants filed a reply, accompanied by a request for an extension of time within the third month (and fee); however, the reply was untimely. Accordingly, the application became abandoned on October 20, 2006. Applicants filed a petition to revive under 37 CFR 1.137(b) on December 21, 2007, which was granted in the decision mailed on April 14, 2008.

Pursuant to 37 CFR 1.704(c)(3):

(c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(3) Abandonment of the application or late payment of the issue fee, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date of abandonment or the date after the date the issue fee was due and ending on the earlier of:

(i) The date of mailing of the decision reviving the application or accepting late payment of the issue fee; or

(ii) The date that is four months after the date the grantable petition to revive the application or accept late payment of the issue fee was filed[.]

Therefore, applicants should have been assessed a delay of 543 days, beginning on the date of abandonment, October 20, 2006, and ending on the earlier date of mailing of the decision reviving the application, April 14, 2008.

In this instance, the periods of reduction under 37 CFR 1.704(c)(3) of 543 days and 37 CFR 1.704(b) of 95 days overlap. Specifically, the overlap of the periods under 37 CFR 1.704(c)(3) and 37 CFR 1.704(b) is October 20, 2006 to January 22, 2007. In consideration of the periods of overlap, the 95-day reduction is being removed and 543-day reduction is being entered.

Lastly, applicants assert that the period of adjustment should be reduced by 37 days pursuant to 37 CFR 1.704(c)(10) for the submission of an amendment under 37 CFR 1.312 after the mailing of the notice of allowance. Applicants' assertion that they should be assessed a delay under 37 CFR 1.704(c)(10) is premature and will not be addressed in the present petition under 37 CFR 1.705(b).

As stated in MPEP 2734,

Since the Office is obligated to provide a determination of patent term adjustment under 35 U.S.C. 154(b) in the notice of allowance (i.e., before the actual patent issue date), the Office must project (or estimate) the actual patent issue date and base its patent term adjustment determination on that projection. Additionally, there are a number of papers which if submitted by an applicant after the mailing of the notice of allowance will result in a reduction of any patent term adjustment, and there may be Office delays occurring after mailing the notice of allowance resulting in an increase in the amount of patent term adjustment. Thus, 37 CFR 1.705(d) provides for a revision of the patent term adjustment when revision is necessitated by events occurring after the mailing of the notice of allowance. 37 CFR 1.705(d) specifically provides

that if there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. 37 CFR 1.705(d) also provides that if the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of 37 CFR 1.705(b).

In view thereof, the patent term adjustment determination at the time of the mailing of the notice of allowance is zero (0) days (325 days of Office delay - 604 days of applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fee is required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.

*Kerry A. Fries*

Kerry A. Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

Enclosure: Copy of updated PAIR screen


**PALM INTRANET**

 Day : Friday  
 Date: 8/1/2008  
 Time: 13:51:58

**PTA Calculations for Application: 10/091759**

Application Filing Date:	03/05/2002	PTO Delay (PTO):	0
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	156
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	-123		

**File Contents History**

Number	Date	Contents Description	PTO	APPL	START
102	08/01/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		543	
101	08/01/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	95		
100	08/01/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	325		
75	10/17/2007	MAIL NOTICE OF ALLOWANCE			
74	10/16/2007	MAIL EXAMINER'S AMENDMENT			
73	10/16/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
72	09/19/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
71	10/12/2007	ISSUE REVISION COMPLETED			
70	10/12/2007	DOCUMENT VERIFICATION			
69	10/12/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
68	10/12/2007	CASE DOCKETED TO EXAMINER IN GAU			
67	10/01/2007	EXAMINER'S AMENDMENT COMMUNICATION			
66	10/01/2007	NOTICE OF ALLOWABILITY			
65	08/09/2007	MAIL NON-FINAL REJECTION			
64	08/06/2007	NON-FINAL REJECTION			
63	05/23/2007	DATE FORWARDED TO EXAMINER			
62	05/03/2007	RESPONSE AFTER NON-FINAL ACTION			
61	04/20/2007	MAIL NON-FINAL REJECTION			
60	04/16/2007	NON-FINAL REJECTION			
59	02/04/2007	DATE FORWARDED TO EXAMINER			
58	01/22/2007	RESPONSE AFTER NON-FINAL ACTION	95	56	
57	01/22/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
56	07/19/2006	MAIL NON-FINAL REJECTION			
55	07/18/2006	NON-FINAL REJECTION			

54	04/28/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED		
53	07/17/2006	CASE DOCKETED TO EXAMINER IN GAU		
52.7	04/28/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
52	04/28/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
51	05/02/2006	DATE FORWARDED TO EXAMINER		
50	04/28/2005	RCE- AF PROCESSED		
49	05/02/2006	DATE FORWARDED TO EXAMINER		
48	04/28/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)		
47.	05/02/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)		
46	10/28/2005	PUBS CASE REMAND TO TC		
45	10/21/2005	WORKFLOW - QUERY REQUEST - BEGIN		
44	04/28/2005	WORKFLOW - REQUEST FOR RCE - BEGIN		
43	04/28/2005	WORKFLOW - REQUEST FOR RCE - BEGIN		
42	04/29/2005	WORKFLOW - FILE SENT TO CONTRACTOR		
41	03/29/2005	EXPORT TO INITIAL DATA CAPTURE		
40	03/22/2005	MAIL NOTICE OF ALLOWANCE		
39	03/21/2005	ISSUE REVISION COMPLETED		
38	03/21/2005	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED		
37	03/21/2005	CASE DOCKETED TO EXAMINER IN GAU		
36	03/21/2005	NOTICE OF ALLOWABILITY		
35	03/11/2005	DATE FORWARDED TO EXAMINER		
34	03/04/2005	RESPONSE AFTER NON-FINAL ACTION		
33	01/25/2005	MAIL NON-FINAL REJECTION		
32	01/24/2005	NON-FINAL REJECTION		
31	07/30/2002	REFERENCE CAPTURE ON IDS		
29	10/29/2004	DATE FORWARDED TO EXAMINER		
28	10/22/2004	RESPONSE AFTER NON-FINAL ACTION		
27	10/29/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE		
26	10/22/2004	WORKFLOW INCOMING AMENDMENT IFW		
25	09/24/2004	MAIL NON-FINAL REJECTION		
24	09/20/2004	NON-FINAL REJECTION		
23	06/24/2004	DATE FORWARDED TO EXAMINER		

22	06/15/2004	RESPONSE AFTER NON-FINAL ACTION		
21	06/15/2004	WORKFLOW INCOMING AMENDMENT IFW		
20	03/25/2004	MAIL NON-FINAL REJECTION		
19	03/22/2004	NON-FINAL REJECTION		
18	07/30/2002	ISSUE REVISION COMPLETED		
17.7	07/30/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
17	07/30/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
16	01/15/2004	DATE FORWARDED TO EXAMINER		
15	12/29/2003	RESPONSE AFTER NON-FINAL ACTION	61	13
14	12/29/2003	REQUEST FOR EXTENSION OF TIME - GRANTED		
13	07/29/2003	MAIL NON-FINAL REJECTION		
12	07/28/2003	NON-FINAL REJECTION		
11	05/21/2003	CASE DOCKETED TO EXAMINER IN GAU		
10	05/14/2003	DATE FORWARDED TO EXAMINER		
9	05/07/2003	RESPONSE TO ELECTION / RESTRICTION FILED		
8	04/10/2003	MAIL RESTRICTION REQUIREMENT		
7	04/09/2003	REQUIREMENT FOR RESTRICTION / ELECTION		
6	03/19/2003	CASE DOCKETED TO EXAMINER IN GAU		
5	04/18/2002	APPLICATION DISPATCHED FROM OIPE		
4	04/11/2002	APPLICATION IS NOW COMPLETE		
2	03/20/2002	IFW SCAN & PACR AUTO SECURITY REVIEW		
1	03/05/2002	INITIAL EXAM TEAM NN		

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#### EXPLANATION OF PTA CALCULATION

#### EXPLANATION OF PTE CALCULATION

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